

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Federal-State Joint Board on)
Universal Service:)Promoting Deployment and)
Subscribership in Unserved)
And Underserved Areas, Including)
Tribal and Insular Areas)

CC Docket No. 96-45

**OPPOSITION OF THE SOUTH DAKOTA INDEPENDENT
TELEPHONE COALITION**

The South Dakota Independent Telephone Coalition (SDITC) hereby opposes the Petition for Reconsideration of the Twelfth Report and Order,¹ filed by Western Wireless Corporation (Western Wireless). Specifically, SDITC opposes Western Wireless' request that the Commission adopt a standard for exerting federal jurisdiction to designate eligible telecommunications carriers (ETCs) that propose to offer service on tribal lands.

In its Petition, Western Wireless asks the Commission to adopt a standard that any carrier filing an ETC petition proposing to offer service directed to tribal lands is not subject to the jurisdiction of a state commission. Western Wireless argues that a carrier should meet the "directed to tribal lands" standard if 1) the carrier secures an agreement with the relevant tribe or

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¹ Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 00-208 (released June 30, 2000). (Twelfth Report and Order).

procures some other indication of tribal support for the carrier's provision of service on the reservation; 2) the carrier's 214(e)(6) petition proposes to provide universal service that is targeted to the reservation; and 3) the carrier certifies that it will use high cost funding solely to support universal service on the reservation.² With respect to part 2) of the standard, Western Wireless proposes that a carrier that meets any one of the following requirements would be considered to propose or provide service targeted to the reservation:

- 1) the service is geographically targeted exclusively or primarily to tribal lands; or
- 2) there are features of the service that the carrier offers to the tribe that distinguish it from services the carrier offers elsewhere; or
- 3) the applicant has a special organizational structure designed for service to the tribal area; or
- 4) the applicant will serve tribal lands and is a commercial mobile radio service provider.³

Western Wireless argues that the Commission has legal authority for adoption of the above standard under Section 214(e)(6) and its general trust relationship and commitment to work with federally recognized Indian Tribes to ensure adequate access to communications services.⁴ Western Wireless also argues that the proposed standard balances the state's interest in regulating service against the tribe's interest in its own sovereignty⁵ and that contracts entered with Indians to provide on-reservation services are outside state jurisdiction.⁶ Last, Western

² Western Wireless Petition at 5-6.

³ Id.

⁴ Id. at 8.

⁵ Id. at 8-9.

⁶ Id. at 11.

Wireless asserts that states have very little interest in regulating universal service targeted to tribal lands.⁷

Western Wireless' Petition should be rejected in its entirety. As an initial matter, Western Wireless appears to use the words "tribal lands" and "reservation" interchangeably. However, the Commission's definition of tribal lands is much broader as it includes areas that are not reservations, but have been designated as "near reservation." "Near reservation" is defined as "areas or communities adjacent or contiguous to reservations which are designated by the [Bureau of Indian Affairs] Commissioner ... as locales appropriate for the extension of financial assistance and/or social services..."⁸ Unlike reservations, near reservation areas are not subject to treaties, federal Indian law and tribal sovereignty. Thus, under Western Wireless' proposed standard, the Commission would usurp state commission authority to designate ETCs not only on reservations, but on non-reservation lands as well.

In addition, Western Wireless is simply wrong that the Commission has clear legal authority to adopt its proposed standard. For example, contrary to Western Wireless' argument, the Commission cannot rely on Section 214(e)(6) as the basis to exert primary authority over ETC designations for all service providers serving reservations or tribal lands. Originally, Section 214(e) authorized state commissions alone to designate ETCs. The Commission had no ETC authority. Section 214(e)(6) was only added to resolve those situations where the state commission did not have jurisdiction. It does not in any way give the Commission primary authority to designate ETCs on reservations, much less non-reservation tribal lands. Thus, there is no indication in the plain language of the statute that the Commission has any special authority

⁷ Id. at 11-12.

⁸ 25 CFR §20.1(r).

to designate ETCs on reservations or tribal lands pursuant to Section 214(e)(6), as argued by Western Wireless.

In addition, because Western Wireless' proposed standard would apply to "tribal lands," which include non-reservation lands, there can be no serious contention that state commission jurisdiction does not extend to such lands or that the states' interests are diminished with respect to such lands. Even with respect to reservations, it is not the case that states do not have an interest in the communications services provided there. On the contrary, the South Dakota Supreme Court found that the South Dakota Public Utilities Commission (PUC) had jurisdiction over a carrier providing service on a reservation; specifically, that the state commission had jurisdiction over the sale of an on-reservation portion of the Timber Lake Exchange.⁹ The Court also rejected the arguments that by regulating the sale of the exchange on the reservation, the PUC infringed on the tribe's exercise of self-government and that because the tribe had entered a consensual agreement with the carrier, the tribe had jurisdiction over the sale. Accordingly, at least with respect to South Dakota, there is no basis for the Commission to find that it has clear legal authority to adopt the Western Wireless standard.

⁹ Cheyenne River Sioux Tribe Telephone Authority v. Public Utilities Commission, 595 N.W.2d 604 (S.D. 1999).

Based on the foregoing, SDITC urges the FCC to reject the Petition for Reconsideration filed by Western Wireless in its entirety.

Respectfully submitted,

SOUTH DAKOTA INDEPENDENT TELEPHONE
COALITION

By: Richard D. Coit / mjs
Richard D. Coit
General Counsel

207 East Capitol, Suite 206
P.O. Box 57
Pierre, SD 57501
(605) 224-7629

Benjamin H. Dickens, Jr.
Mary J. Sisak
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, NW
Suite 300
Washington, DC 20037
(202) 659-0830

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CERTIFICATE OF SERVICE

I, Althea B. Pierce, do hereby certify that on this, the 2nd day of October, 2000, a copy of the opposition was served by first class United States mail, postage prepaid, to the parties listed below:

Gene DeJordy
Vice President, Regulatory Affairs
Jim Blundell, Director of External Affairs
Western Wireless Corporation
3650 – 131st Avenue, SE, Suite 4000
Bellevue, WA 98006

Cynthia B. Miller, Esquire
Bureau of Intergovernmental Liaison
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Michele C. Farquhar
David L. Sieradzki
Ronnie London
Hogan & Hartson, L.L.P.
555 13th Street, NW
Washington, DC 20004

L. Marie Guillory
Jill Canfield
National Telephone Cooperative Association
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203

Counsel for Western Wireless
Corporation

Steven R. Beck
Wilmer Cutler & Pickering
1020 19th Street, Suite 700
Washington, DC 20036

David Cosson
Kraskin, Lesse & Cosson, LLP
2120 L Street, NW, Suite 520
Washington, DC 20037

Counsel for Qwest Corporation

Counsel for Project Telephone Company
and Range Telephone Cooperative

William Kindle, Chairman
Rosebud Sioux Tribe of South Dakota
SICANGU/OYATE
P.O. Box 430
Rosebud, SD 57570

Charles J. Scharnberg
Roger K. Toppins
Alfred G. Richter, Jr.
1401 I Street, NW, 11th Floor
Washington, DC 20005


Counsel for SBC Communications, Inc.

Sam S. Painter
General Counsel for the Crow Tribe of
Indians
Crow Tribal Council
P.O. Box 159
Crow Agency, MT 59022

Joseph F. McConnell, President
Fort Belknap Indian Community Council
R.R. 1, Box 66
Fort Belknap Agency
Harlem, MT 58526

Michael Hooper, Chairman
Confederated Tribes of the Goshute
Reservation
P.O. Box 6104
Ibapah, UT 84034

Wilbur Between Lodges, Vice Chairman
Oglala Sioux Tribe
Box H
Pine Ridge, SD 57770



Althea B. Pierce